

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DANIEL NEAL,

Plaintiff,

Civil Action No. 19-CV-00707

- against -

VERIFIED ANSWER

THE CITY OF NEW YORK, SEAGATE COURT
HOMEOWNERS ASSOCIATION, INC., SEAGATE
HOMEOWNERS ASSOCIATION, THE SEAGATE
ASSOCIATION, and DARRIEN PHILLIPS,

Defendants.
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Defendants SEAGATE COURT HOMEOWNERS ASSOCIATION, INC., SEAGATE HOMEOWNERS ASSOCIATION, THE SEAGATE ASSOCIATION and DARRIEN PHILLIPS, (“Defendants”), by and through their attorneys, Goldberg Segalla LLP, answering the Verified Complaint of Plaintiff herein, respectfully show to this Court and allege, upon information and belief, the following:

1. Defendants deny having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “1” of the Verified Complaint.
2. Defendants deny having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “2” of the Verified Complaint.
3. Defendants deny having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “3” of the Verified Complaint.
4. Defendants deny having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “4” of the Verified Complaint.
5. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “5” of the Verified Complaint.

6. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “6” of the Verified Complaint.

7. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “7” of the Verified Complaint.

8. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “8” of the Verified Complaint.

9. Defendants deny the allegation contained in paragraph “9” of the Verified Complaint.

10. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “10” of the Verified Complaint.

11. Defendants deny having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “11” of the Verified Complaint.

12. Defendants deny having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “12” of the Verified Complaint.

13. Defendants deny having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph “13” of the Verified Complaint.

14. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “14” of the Verified Complaint and respectfully refers all questions of law to the Court.

15. Defendants deny the allegation contained in paragraph “15” of the Verified Complaint.

16. Defendants deny the allegation contained in paragraph “16” of the Verified Complaint and respectfully refers all questions of law to the Court.

17. Defendants deny the allegation contained in paragraph “17” of the Verified Complaint.

18. Defendants deny the allegation contained in paragraph “18” of the Verified Complaint.

19. Defendants deny the allegation contained in paragraph “19” of the Verified Complaint.

20. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “20” of the Verified Complaint.

21. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “19” of the Verified Complaint.

AS AND FOR A RESPONSE TO FIRST CAUSE OF ACTION

22. Defendant repeats, reiterates and realleges each and every denial hereinabove set forth with respect to paragraphs referred to in paragraphs numbered “1” through “21” of the Verified Complaint, as if more specifically set forth in answer to paragraph “21” of Plaintiffs Complaint.

23. Defendants deny the allegation contained in paragraph “23” of the Verified Complaint and respectfully refers all questions of law to the Court.

24. Defendants deny the allegations contained in paragraph “24” of the Verified Complaint and respectfully refers all questions of law to the Court.

25. Defendants deny the allegations contained in paragraph “25” of the Verified Complaint.

26. Defendants deny the allegations contained in paragraph “26” of the Verified Complaint.

27. Defendants deny the allegations contained in paragraph “27” of the Verified Complaint.

28. Defendants deny the allegations contained in paragraph “28” of the Verified Complaint.

29. Defendants deny the allegations contained in paragraph “29” of the Verified Complaint.

30. Defendants deny the allegations contained in paragraph “30” of the Verified Complaint.

31. Defendants deny the allegations contained in paragraph “31” of the Verified Complaint.

32. Defendants deny the allegations contained in paragraph “32” of the Verified Complaint.

33. Defendants deny the allegations contained in paragraph “33” of the Verified Complaint.

34. Defendants deny the allegations contained in paragraph “34” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

35. Defendant repeats, reiterates and realleges each and every denial hereinabove set forth with respect to paragraphs referred to in paragraphs numbered “1” through “34” of the Verified Complaint, as if more specifically set forth in answer to paragraph “34” of Plaintiff’s Complaint.

36. Defendants deny the allegation contained in paragraph “36” of the Verified Complaint.

37. Defendants deny the allegation contained in paragraph “37” of the Verified Complaint.

38. As to these answering Defendants, Defendants deny the allegations contained in paragraph “38” of the Verified Complaint.

39. As to these answering Defendants, Defendants deny the allegations contained in paragraph “39” of the Verified Complaint.

40. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “40” of the Verified Complaint.

41. As to these answering Defendants, Defendants deny the allegation contained in paragraph “41” of the Verified Complaint.

42. As to these answering Defendants, Defendants deny the allegation contained in paragraph “42” of the Verified Complaint.

43. As to these answering Defendants, Defendants deny the allegation contained in paragraph “43” of the Verified Complaint.

44. As to these answering Defendants, Defendants deny the allegation contained in paragraph “44” of the Verified Complaint.

45. As to these answering Defendants, Defendants deny the allegation contained in paragraph “45” of the Verified Complaint.

46. As to these answering Defendants, Defendants deny the allegation contained in paragraph “46” of the Verified Complaint.

47. As to these answering Defendants, Defendants deny the allegation contained in paragraph “47” of the Verified Complaint.

48. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “48” of the Verified Complaint.

49. Defendants deny the allegation contained in paragraph “49” of the Verified Complaint as to this answering defendant.

50. As to these answering Defendants, Defendants deny the allegation contained in paragraph “50” of the Verified Complaint.

51. As to these answering Defendants, Defendants deny the allegation contained in paragraph “51” of the Verified Complaint.

52. As to these answering Defendants, Defendants deny the allegation contained in paragraph “52” of the Verified Complaint.

53. Defendants deny the allegation contained in paragraph “53” of the Verified Complaint.

54. Defendants deny the allegation contained in paragraph “54” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

55. Defendant repeats, reiterates and realleges each and every denial hereinabove set forth with respect to paragraphs referred to in paragraphs numbered “1” through “55” of the Verified Complaint, as if more specifically set forth in answer to paragraph “55” of Plaintiff’s Complaint.

56. Defendants deny the allegation contained in paragraph “56” of the Verified Complaint.

57. Defendants deny the allegation contained in paragraph “57” of the Verified Complaint.

58. Defendants deny the allegation contained in paragraph “58” of the Verified Complaint.

59. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “59” of the Verified Complaint.

60. Defendants deny the allegation contained in paragraph “60” of the Verified Complaint.

61. Defendants deny the allegation contained in paragraph “61” of the Verified Complaint.

62. Defendants deny the allegation contained in paragraph “62” of the Verified Complaint.

63. As to these answering Defendants, Defendants deny the allegation contained in paragraph “63” of the Verified Complaint.

64. As to these answering Defendants, Defendants deny the allegation contained in paragraph “64” of the Verified Complaint.

65. Defendants deny the allegation contained in paragraph “65” of the Verified Complaint.

66. Defendants deny the allegations contained in paragraph “66” of the Verified Complaint.

67. Defendants deny the allegations contained in paragraph “67” of the Verified Complaint.

68. Defendants deny the allegations contained in paragraph “68” of the Verified Complaint.

69. Defendants deny the allegations contained in paragraph “69” of the Verified Complaint.

AS AND FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION

70. Defendant repeats, reiterates and realleges each and every denial hereinabove set forth with respect to paragraphs referred to in paragraphs numbered “1” through “69” of the Verified Complaint, as if more specifically set forth in answer to paragraph “69” of Plaintiff’s Complaint.

71. Defendants deny the allegation contained in paragraph “71” of the Verified Complaint.

72. Defendants deny the allegation contained in paragraph “72” of the Verified Complaint.

73. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “73” of the Verified Complaint.

74. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “74” of the Verified Complaint.

75. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “75” of the Verified Complaint.

76. Defendants deny the allegation contained in paragraph “76” of the Verified Complaint.

77. Defendants deny the allegation contained in paragraph “77” of the Verified Complaint and respectfully refers all questions of law to the Court.

78. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “78” of the Verified Complaint.

79. As to these answering Defendants, Defendants deny the allegation contained in paragraph “79” of the Verified Complaint.

80. Defendants deny having knowledge or information sufficient to form a belief as to the allegation contained in paragraph “80” of the Verified Complaint.

81. As to these answering Defendants, Defendants deny the allegation contained in paragraph “81” of the Verified Complaint.

82. Defendants deny knowledge or information sufficient to form a belief as to the allegation contained in paragraph “82” of the Verified Complaint.

83. As to these answering Defendants, Defendants deny the allegation contained in paragraph “83” of the Verified Complaint.

84. Defendants deny knowledge or information sufficient to form a belief as to the allegation contained in paragraph “84” of the Verified Complaint.

85. As to these answering Defendants, Defendants deny the allegation contained in paragraph “85” of the Verified Complaint.

86. Defendants deny knowledge or information sufficient to form a belief as to the allegation contained in paragraph “86” of the Verified Complaint.

87. Defendants deny the allegation contained in paragraph “87” of the Verified Complaint as to this answering defendant and respectfully refers all questions of law to the Court.

88. Defendants deny the allegation contained in paragraph “88” of the Verified Complaint.

89. Defendants deny knowledge or information sufficient to form a belief as to the allegation contained in paragraph “89” of the Verified Complaint.

90. Defendants deny the allegation contained in paragraph “90” of the Verified Complaint as to this answering defendant and respectfully refers all questions of law to the Court.

91. Defendants deny knowledge or information sufficient to form a belief as to the allegation contained in paragraph “91” of the Verified Complaint.

92. As to these answering Defendants, Defendants deny the allegation contained in paragraph “92” of the Verified Complaint as to this answering defendant.

93. Defendants deny the allegation contained in paragraph “93” of the Verified Complaint.

94. Defendants deny the allegation contained in paragraph “94” of the Verified Complaint.

95. Defendants deny the allegation contained in paragraph “95” of the Verified Complaint.

96. Defendants deny the allegation contained in paragraph “96” of the Verified Answer.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

97. Plaintiff’s Verified Complaint fails to states a cause of action upon which relief may be granted as against these answering defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

98. The negligence of Plaintiff was a proximate, contributing, or superseding cause of his alleged damages. Such negligence or fault, therefore, bars or diminishes any liability of Defendants for any alleged damages sustained by Plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

99. The negligence or fault of persons other than Defendants was a proximate, contributing, or superseding cause of Plaintiff's alleged damages or resulting loss. Such negligence or fault, therefore, bars or diminishes liability of Defendants for any alleged damages sustained by Plaintiff.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

100. Plaintiff assumed the risk of any and all damages alleged in the Verified Complaint.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

101. To the extent discovery may show or demonstrate all or part of Plaintiff's claims which form the basis of his Verified Complaint have either been settled or adjudicated, the doctrines of res judicata, collateral estoppel, payment and release, waiver, and accord and satisfaction bar Plaintiff's claims against Defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

102. Any assessment of damages against Defendants should be limited pursuant to Article 16 of the New York Civil Practice Law and Rules.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

103. Any damages awarded to Plaintiff must be reduced by the amount Plaintiff received or will receive from any collateral source, including, but not limited to, Medicare, Medicaid, insurance, social security, workers' compensation, or employee benefit programs, that the Court finds was, or will with reasonable certainty, be replaced or indemnified pursuant to Section 4545(a) of the New York Civil Practice Law and Rules.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

104. Plaintiff failed to join feasible and necessary parties to afford a just adjudication of the causes of action alleged in the Verified Complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

105. Plaintiff failed to take reasonable action to mitigate the injuries and damages alleged in the Verified Complaint.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

106. This court lacks subject matter jurisdiction over the defendants.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

107. To the extent that any party or non-party is found to have fault for Plaintiffs' alleged injuries, Plaintiffs' damages should be apportioned in accordance with the comparative fault of all parties at fault.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

108. That at all times herein mentioned, and mentioned in the Complaint, the peace officers, and/or agents, servants or employees of the Answering Defendants who had anything to do with the Plaintiff were acting in the performance of their respective duties as peace officers, and/or agents, servants or employees of the Answering Defendants; that all of the acts performed by each peace officer, and/or agent, servant or employee of the Answering Defendants in connection with Plaintiff were performed in good faith, without malice, and with reasonable and proper cause; in the ordinary course of their duties as such peace officers, and/or agents, servants or employees of the Answering Defendants and as peach officers of the State of New York, and as required by them and each of them by reason of Plaintiff's conduct and Plaintiff's arrest and confinement.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

109. The actions complained of were in full accord with the applicable law.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

110. Plaintiff's constitutional and statutory rights have not been violated by the Defendants herein.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

111. The alleged acts or omissions of the Answering Defendants were not the proximate cause of any injuries or damages incurred by Plaintiff and any injuries or damages incurred by Plaintiff were the result of his own actions, the actions of others and/or the superseding intervention of causes outside the control of the Answering Defendants.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

112. If the Plaintiff sustained the damages as alleged in the Complaint, such damages were sustained through and by virtue of the negligent, reckless and/or wrongful conduct, acts or omissions of a third party, without any negligence, wrongdoing acts or omissions on the part of Answering Defendants' contributing thereto.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

113. Should the Plaintiff recover damages as a result of a finding of liability in whole or in part as against Answering Defendants, such recovery should be reduced and diminished in proportion to the degree of comparative negligence, recklessness and/or wrongdoing of Plaintiff in contributing to such damages.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

114. That the Court lacks jurisdiction over the person of the answering Defendant, on the ground that the Summons was not properly served pursuant to the Civil Practice Law and Rules.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

115. That there is no personal jurisdiction over defendants, Seagate Court Homeowners Association, Inc., Seagate Homeowners Association, and the Seagate Association, having been no proper service of process.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

116. The answering defendant, pursuant to §1412 of the CPLR, alleges upon information and belief that if the plaintiff sustained any injuries or damages at the time and place alleged in the complaint, such injuries or damages were the result of the culpable conduct of the plaintiff because of the plaintiff's negligence or assumption of risk. Should it be found, however, that this defendant is liable to the plaintiff herein, any liability being specifically denied, this answering defendant demands that any damages that are found to be apportioned among the respective parties according to the degree of responsibility each is found to have in the occurrence, in proportion to the entire measure of responsibility for each occurrence

**AS AND FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANT,
THE CITY OF NEW YORK, ALLEGES:**

117. If the damages and injuries alleged in the plaintiff's Complaint were the result of any negligence other than the plaintiff's own negligence, said injuries and damages were caused by the active, primary and affirmative negligence of The City of New York their agents, servants and/or employees, without any active negligence or active participation on the part of the answering defendants contributing thereto; and in that said co-defendants caused, created, maintained, controlled, supervised and were responsible for the conditions alleged in plaintiff's Complaint and at the situs of the occurrence; and in that said co-defendants were the primary wrong-doers of any and all negligent or wrongful acts; and in that co-defendants actively and

actually caused, created, maintained and were responsible for the conditions alleged in plaintiff's Complaint; and that for these reasons The City of New York is obligated to indemnify and hold harmless the answering defendant from and against any and all liability and damages which may be imposed upon the answering defendant, and if any negligence or liability is found to exist on the part of the answering defendant, such liability and negligence is secondary and/or passive, or the result solely of operation of law as opposed to the liability of The City of New York, whose liability is primary and active as aforesaid, and in such event the answering defendant demands judgment over and against The City of New York in indemnity and/or contribution, for the amount of any verdict or judgment which shall or may be had against the answering defendant in this action, together with all costs and expenses which may be incurred in the defense of this action.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST CO-DEFENDANT,
THE CITY OF NEW YORK , ALLEGES:**

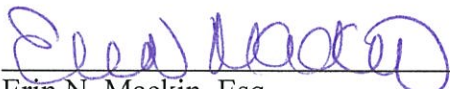
118. If the answering defendant is held liable to the plaintiff in this action, such liability and damages will have arisen out of and have been contributed to in all or in part by the negligence, recklessness, carelessness, breach of contract, breach of warranty and/or strict liability of The City of New York, and in such event the answering defendant demands judgment over and against The City of New York in indemnity and /or contribution, for the amount of any verdict or judgment which shall or may be had against the answering defendant in this action, together with all costs and expenses which may be incurred in the defense of this action.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Verified Complaint, and further demand judgment for the amount of any judgment obtained against Defendants on the basis of apportionment of responsibility in such amounts as a jury or Court may direct, together with the costs and disbursements of this action.

Dated: Garden City, New York
March 7, 2019

Yours, etc.,

GOLDBERG SEGALLA LLP

By: 
Erin N. Mackin, Esq.
Attorneys for Defendants – *Seagate Court Homeowners Association, Inc. Seagate Homeowners Association, The Seagate Association, and Darrien Phillips*
200 Garden City Plaza, Suite 520
Garden City, New York 11530
(516) 281-9800
GS File No.: 16989.0122

TO: Stuart Jacobs, Esq.
Jacobs & Hazan, LLP
30 Vesey Street, 4th Floor
New York, New York 10007

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

ERIN N. MACKIN, an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. I am the attorney answering for Defendants SEAGATE COURT HOMEOWNERS ASSOCIATION, INC., SEAGATE HOMEOWNERS ASSOCIATION, and THE SEAGATE ASSOCIATION.
2. I have read the annexed Verified Answer and know the contents thereof and the same are true to my knowledge except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge is based up a review of the files maintained in my office and discussions with my clients.
3. The reason this Verification is made by your affirmant and not by Defendants is that Defendants do not maintain an office in the County in which I maintain my office.

Dated: Garden City, New York
March 7, 2019


ERIN N. MACKIN

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

ERIN N. MACKIN, an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. I am the attorney for answering Defendant DARRIEN PHILLIPS.
2. I have read the annexed Verified Answer and know the contents thereof and the same are true to my knowledge except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge is based up a review of the files maintained in my office and discussions with my clients.
3. The reason this Verification is made by your affirmant and not by Defendants is that Defendants do not maintain an office in the County in which I maintain my office.

Dated: Garden City, New York
March 7, 2019


ERIN N. MACKIN